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SIPDIS

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TAGS: ETRD EFIN EINV ECON NI
SUBJECT: NIGERIA: 2004 NATIONAL TRADE ESTIMATE REPORT

REF: STATE 310953

¶1. (U) In response to reftel, Post is pleased to provide the following update to the 2003 National Trade Estimate Report. The figures in paragraph 2 will be updated by USTR.

TRADE SUMMARY

¶2. (U) The U.S. trade deficit with Nigeria was $4.9 billion in 2002, a decrease of $2.9 billion from $7.8 billion in 2001. U.S. goods exports in 2002 were $1.1 billion, up 10.7 percent from the previous year. Corresponding U.S. imports from Nigeria were $6.0 billion, down 32.0 percent from 2001. Nigeria is the 52nd largest export market for U.S. goods. The flow of U.S. foreign direct investment (FDI) in Nigeria in 2001 was $1.5 billion, up from $1.2 million in 2000. U.S. FDI in Nigeria is primarily concentrated in the petroleum sector.

IMPORT POLICIES

Tariffs

¶3. (U) Tariffs provide the Nigerian government with its second largest source of revenue after oil exports. In its last major tariff revision in March 2003, the Nigerian government cut duties on 230 tariff line items (mostly raw materials, base metals, and capital equipment) to as low as 2.5 percent, while raising them on 30 line items (largely plastic, rubber, and aluminum articles) to as high as 65 percent. Most increases were relatively small. The Nigerian government announced similar cuts and increases, often on the same items year-on-year, in 2000 and 2001 and will likely announce another round of tariff adjustments as part of its 2004 budget.

¶4. (U) Frequent policy changes and uneven duty collection make importing difficult and expensive and create severe bottlenecks for commercial activities. The problem affects foreign and domestic investors alike and is aggravated by Nigeria's dependence on imported raw materials and finished goods. Many leading importers resort to under-invoicing and smuggling to avoid paying full tariffs.

Non-tariff Trade Barriers

¶5. (U) The Nigerian government continues to violate WTO prohibitions against certain non-tariff trade barriers. Bans on a variety of items - sorghum, millet, wheat flour, cassava, frozen poultry, vegetable oil (in bulk), kaolin, gypsum, mosquito repellent coils, printed fabrics, used clothing, and bagged cement - continued into 2003. A ban on used car imports also continued but was altered to prohibit the importation of vehicles more than eight (rather than five) years old. Food products such as fruit juice in retail packs, pasta, biscuits, confectionery and chocolate products, canned beer, and bottled water were added to the list of banned items in 2003.

Customs Barriers

¶6. (U) Nigeria's ports continue to present major obstacles to trade. Importers face inordinately long clearance procedures, high berthing and unloading costs, erratic application of customs regulations, and corruption. The Nigeria Customs Service (NCS) stepped up enforcement of its 100 percent physical inspection policy in 2001 in an attempt to reduce smuggling and under-valuation of imports, but officials admit they do not have the resources to inspect every incoming container. The NCS operates a pre-shipment inspection regime under which contracted inspection companies at ports of origin issue inspection reports that their Nigerian counterparts use to indicate items shipped,

their value, and applicable customs duties.

¶7. (U) The NCS planned to abandon its pre-shipment inspection regime for 100 percent destination inspections in 2002 and 2003, but introduction was delayed when importers protested that NCS officials might use their positions as sole valuation authorities to extract unauthorized facilitation fees. The Nigerian government now hopes to introduce destination inspections in early 2004, but NCS risk assessment and other databases are not fully operational.

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STANDARDS, TESTING, LABELING, AND CERTIFICATION
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¶8. (U) Rules concerning sanitary and phytosanitary standards, testing, and labeling are relatively well defined, but bureaucratic hurdles slow the approval process. Regardless of origin, all food, drug, cosmetic, and pesticide imports must be accompanied by certificates of analysis from manufacturers and appropriate national authorities, and specified animal products, plants, seeds, and soils must be accompanied by proper inspection certificates. U.S. exporters may obtain these certificates from the U.S. Department of Agriculture. By law, items entering Nigeria must be labeled exclusively in the metric system. Products with dual or multiple markings should be refused entry, but such items are often found in Nigerian markets.

¶9. (U) High tariffs and erratic application of import and labeling regulations make importing high-value perishable products difficult. Disputes among Nigerian agencies over the interpretation of regulations often cause delays, and frequent changes in Customs guidelines slow the movement of goods through Nigerian ports. These setbacks often result in product deterioration and significant losses for perishable goods importers.

¶10. (U) The National Agency for Food and Drug Administration and Control (NAFDAC) is charged with protecting Nigerian consumers from fraudulent or unhealthy products. The agency recently targeted the illicit importation of counterfeit and expired pharmaceuticals for special attention, particularly when imports are from the Far East and South Asia. NAFDAC's severely limited capacity for carrying out inspection and testing contributes to an occasionally heavy-handed or arbitrary approach to regulatory enforcement, and the agency has occasionally challenged legitimate food imports.

¶11. (U) U.S. products do not appear to be subject to extraordinary or discriminatory restrictions or regulations, but the widespread use of fraudulent documentation by non-U.S. exporters may put U.S. exporters at a competitive disadvantage. When illicit, undocumented imports of particular products such as frozen poultry exceed legal imports, the fact of meeting stipulated Nigerian standards becomes irrelevant.

GOVERNMENT PROCUREMENT

¶12. (U) The Obasanjo administration has made modest progress on its pledge to practice open and competitive bidding and contracting for government procurement and privatization. The initial stages of the tendering process tend to be transparent and even-handed, but as tenders move through the decision-making process, they often become opaque. Allegations by unsuccessful bidders of corrupt behavior by senior government officials and foreign companies are common, but they rarely provoke substantive reactions.

¶13. (U) New procurement and contracting guidelines were issued in January 2001, and a due process office, the Budget Monitoring and Price Intelligence Unit, was established. The agency acts as a clearinghouse for government contracts and procurement and monitors the implementation of projects to ensure compliance with contract terms and budgetary restrictions. Procurements worth more than 50 million naira (about $380,000) are subject to full due process. Foreign companies incorporated in Nigeria receive national treatment, and government tenders are published in local newspapers. U.S. companies have won Nigerian government contracts in several sectors.

EXPORT SUBSIDIES

¶14. (U) The Nigerian Export Promotion Council (NEPC) and the Nigerian Export-Import Bank (NEXIM) administer industrial export incentive programs that include tax concessions, export expansion grants, export development funds, capital assets depreciation allowances, and foreign currency retention programs. Funding constraints limit the effectiveness of these programs, and many people allege that only favored individuals and businesses benefit. Aside from these limited incentive programs, Nigeria's non-oil export sector does not receive subsidies or other significant support from the government.

¶15. (U) In an effort to attract investment in export-oriented industries, the Nigerian government established the Nigerian Export Processing Zone Authority (NEPZA) in 1992. Of five zones established under NEPZA, only the Calabar and Bonny Island (Onne) export processing zones function. NEPZA rules dictate that at least 75 percent of production in the zones must be exported, but lower export levels are reportedly tolerated. The Nigerian government converted the Calabar export processing zone into a free trade zone in 2001, but it is unclear whether the new designation has improved its export performance.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

¶16. (U) Nigeria is a member of the World Intellectual Property Organization (WIPO) and a signatory to the Universal Copyright Convention (UCC), the Berne Convention, and the Paris Convention (Lisbon text). Legislation pending in the National Assembly may establish a legal framework for an IPR system compliant with WTO rules. At the moment, Nigeria's IPR laws afford protection that complies with most WTO provisions.

¶17. (U) Despite Nigeria's active participation in these conventions, its reasonably comprehensive IPR laws, and growing interest among individuals in seeing their intellectual property protected, piracy is rampant. Counterfeit pharmaceuticals, business and entertainment software, music and video recordings, and other consumer goods are sold openly throughout the country.

¶18. (U) The Nigerian government's lack of institutional capacity to address IPR issues is a major constraint to enforcement. Relevant Nigerian institutions suffer from low morale, poor training, and limited resources, and fraudulent alteration of IPR documentation is common. Patent and trademark enforcement remains weak, and judicial procedures are slow and subject to corruption. Companies rarely seek trademark or patent protection because they generally perceive Nigerian enforcement institutions as ineffective. Nonetheless, recent government efforts to curtail IPR abuse have yielded results. The Nigerian police, working closely with the Nigerian Copyright Commission (NCC), have raided enterprises producing and selling pirated software and videos, and a number of high-profile charges have been filed against IPR violators. Unfortunately, most raids appear to target small rather than large and well-connected pirates, and very few cases involving copyright, patent, or trademark infringement have been successfully prosecuted. Most cases have been settled out of court, if at all.

¶19. (U) Nigeria's broadcast regulations do not permit re-broadcasting or excerpting foreign programs unless the station has an affiliate relationship with a foreign broadcaster. This regulation is generally respected, but some cable providers illegally transmit foreign programs. The National Broadcasting Commission (NBC) monitors the industry and is responsible for punishing infractions.

¶20. (U) IPR problems in Nigeria's film industry worsened dramatically following the Nigerian government's 1981 nationalization of the country's filmmaking and distribution enterprises as part of its campaign to "indigenize" the economy. The legitimate film distribution market has yet to recover. Almost no foreign feature films have been distributed in the country in the last two decades, movie theaters have ceased to operate, and the widespread pirating of foreign and domestic videos discourages the entry of licensed distributors.

SERVICES BARRIERS

¶21. (U) Foreign participation in the services sector is generally not restricted. Regulations provide 100 percent foreign access to service sectors, including banking, insurance, and securities. Central Bank of Nigeria directives stipulate minimum levels of paid-in capital. At least two foreign banks have initiated operations in Nigeria in recent years, and several Nigerian banks have received infusions of foreign capital.

¶22. (U) Professional bodies in engineering, accounting, medicine and law define minimum professional requirements. Nigeria imposes quotas on expatriate employment based on firms' issued capital. Quotas are especially strict in the oil and gas sector. Oil companies must hire Nigerian workers unless they can demonstrate that particular positions require expertise not found in the local workforce. Fields such as finance and human relations are almost exclusively reserved for Nigerian hires, but certain geosciences and management positions may be filled by expatriates with the approval of the National Petroleum Investment and Management Services (NAPIMS) agency. Each oil company negotiates with NAPIMS for its expatriate worker allotment.

INVESTMENT BARRIERS

¶23. (U) Under the Nigerian Investment Promotion Commission (NIPC) Decree of 1995, Nigeria allows 100 percent foreign ownership of firms outside the petroleum sector. Investment in the petroleum sector is limited to existing joint ventures or production-sharing agreements. Foreign investors may buy shares of any Nigerian firm except firms on a "negative list" (such as manufacturers of firearms and ammunition and military and paramilitary apparel). Foreign investors must register with the NIPC after incorporation under the Companies and Allied Matters Decree of 1990. The Decree prohibits nationalization or expropriation of a foreign enterprise by the Nigerian government except in cases of national interest.

¶24. (U) Despite efforts to improve the country's investment climate, disincentives to investing in Nigeria continue to plague foreign entrepreneurs. Potential investors must contend with high business taxes, confusing land ownership laws, arbitrary application of regulations, corruption, and extensive crime. There is no tradition supporting the sanctity of contracts, and the court system for settling commercial disputes is weak and sometimes biased. Foreign oil companies are under pressure to increase procurement from indigenous firms. NAPIMS has set a target of 40 percent local content for oil-related projects; how that is achieved - whether it is based on the value of the contract or the nature of the goods and services used and whether using a Nigerian partner or subcontractor is sufficient regardless of the origin of equipment or raw materials - remains nebulous and subject to negotiation on a project-by-project basis.

¶25. (U) Nigerian government efforts to eliminate financial crimes such as money laundering and advance-fee fraud (or "419 fraud" after the relevant section of the Nigerian Criminal Code) have increased but been largely ineffective. Fraud, theft, and extortion are rampant. With the encouragement and cooperation of U.S. law enforcement agencies, more "419" perpetrators are being prosecuted by the Nigerian government.

¶26. (U) International watchdog groups routinely rank Nigeria among the most corrupt countries in the world, but Nigeria is beginning to show signs of reversing decades of corruption and economic stagnation. While sales of U.S. goods and services to public and private sector enterprises is not restricted, U.S. suppliers face endemic anticompetitive behavior. Some U.S. exporters believe sales are lost when they refuse to engage in illicit or corrupt behavior. Others say Nigerian businessmen and officials understand that U.S. firms must adhere to U.S. Foreign Corrupt Practices Act standards and ultimately believe these restrictions help minimize their exposure to corruption. Unfortunately, U.S. exports to Nigeria occasionally suffer from unfair trade practices by foreign competitors willing to accommodate requests for improper payments.

ELECTRONIC COMMERCE

¶27. (U) The growth of electronic commerce and telecommunications in Nigeria, albeit from a low base, offers opportunities for the provision of U.S. products and services. While there are no trade restrictions that discriminate against such U.S. products, high-technology industries suffer from the same constraints noted for other industries.

HINSON-JONES